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7 **BEFORE THE**
8 **BOARD OF PHARMACY**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 2798

11 CYNTHIA ANN DANIELS
12 1267 Coon Court
Cool, CA 95614

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

13 Original Pharmacist License Number 46850

14 Respondent.
15 _____

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
18 above-entitled proceedings that the following matters are true:
19

20 PARTIES

21 1. Patricia F. Harris (Complainant) is the Executive Officer of the Board of
22 Pharmacy. She brought this action solely in her official capacity and is represented in this matter
23 by Bill Lockyer, Attorney General of the State of California, by Kent D. Harris, Deputy Attorney
24 General.

25 2. Respondent Cynthia Ann Daniels (Respondent) is represented in this
26 proceeding by attorney Christopher Collins, Esq., whose address is 135 Court Street, Auburn,
27 CA 95603.
28

1 3. On or about January 28, 1994, the Board of Pharmacy issued Original
2 Pharmacist License Number 46850 No. 4680 to Cynthia Ann Daniels (Respondent). The license
3 was in full force and effect at all times relevant to the charges brought in Accusation No. 2798.

4 JURISDICTION

5 4. Accusation No. 2798 was filed before the Board of Pharmacy (Board),
6 Department of Consumer Affairs, and is currently pending against Respondent. The Accusation
7 and all other statutorily required documents were properly served on Respondent on March 1,
8 2005. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of
9 Accusation No. 2798 is attached as exhibit A and incorporated herein by reference.

10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read, fully discussed with counsel, and
12 understands the charges and allegations in Accusation No. 2798. Respondent has also carefully
13 read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and
14 Disciplinary Order.

15 6. Respondent is fully aware of her legal rights in this matter, including the
16 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
17 counsel at her own expense; the right to confront and cross-examine the witnesses against her;
18 the right to present evidence and to testify on her own behalf; the right to the issuance of
19 subpoenas to compel the attendance of witnesses and the production of documents; the right to
20 reconsideration and court review of an adverse decision; and all other rights accorded by the
21 California Administrative Procedure Act and other applicable laws.

22 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
23 each and every right set forth above.

24 CULPABILITY

25 8. Respondent admits the truth of each and every charge and allegation in
26 Accusation No. 2798.

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9. Respondent agrees that her Original Pharmacist License Number 46850 is subject to discipline and she agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Original Pharmacist License Number 46850 issued to Respondent Cynthia Ann Daniels is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions:

1. **Actual Suspension - Pharmacist.** License number 46850, issued to Respondent Cynthia Ann Daniels is suspended for a period of nine (9) months. Said time period is to be calculated from the date of August 31, 2004, at which time respondent voluntarily stipulated to an order from the Sacramento County Superior Court prohibiting her licensed

1 practice pursuant to Penal Code section 23.

2 During suspension, Respondent shall not enter any pharmacy area or any portion
3 of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other
4 distributor of drugs which is licensed by the Board, or any manufacturer, or where dangerous
5 drugs and devices or controlled substances are maintained. Respondent shall not practice
6 pharmacy nor do any act involving drug selection, selection of stock, manufacturing,
7 compounding, dispensing or patient consultation; nor shall Respondent manage, administer, or
8 be a consultant to any licensee of the Board, or have access to or control the ordering,
9 manufacturing or dispensing of dangerous drugs and devices or controlled substances.

10 Respondent shall not engage in any activity that requires the professional
11 judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of
12 pharmacy. Respondent shall not perform the duties of a pharmacy technician or an exemptee for
13 any entity licensed by the Board. Subject to the above restrictions, Respondent may continue to
14 own or hold an interest in any pharmacy in which she holds an interest at the time this decision
15 becomes effective unless otherwise specified in this order.

16 Upon completion of the suspension period as calculated above, respondent may
17 resume practice as directed by the Pharmacist Recovery Program (PRP).

18 2. **Obey All Laws.** Respondent shall obey all state and federal laws and
19 regulations substantially related to or governing the practice of pharmacy.

20 Respondent shall report any of the following occurrences to the Board, in writing,
21 within 72 hours of such occurrence:

- 22 • an arrest or issuance of a criminal complaint for violation of any provision of the
23 Pharmacy Law, state and federal food and drug laws, or state and federal
24 controlled substances laws;
- 25 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to
26 any criminal complaint, information or indictment;
- 27 • a conviction of any crime;
- 28 • discipline, citation, or other administrative action filed by any state and federal

1 agency which involves Respondent's license or which is related to the practice
2 of pharmacy or the manufacturing, obtaining, handling or distribution or billing
3 or charging for any drug, device or controlled substance.

4 **3. Reporting to the Board.** Respondent shall report to the Board
5 quarterly. The report shall be made either in person or in writing, as directed. Respondent
6 shall state under penalty of perjury whether there has been compliance with all the terms and
7 conditions of probation. If the final probation report **is not** made as directed, probation shall
8 be extended automatically until such time as the final report is made and accepted by the
9 Board.

10 **4. Interview with the Board.** Upon receipt of reasonable notice,
11 Respondent shall appear in person for interviews with the Board upon request at various
12 intervals at a location to be determined by the Board. Failure to appear for a scheduled
13 interview without prior notification to Board staff shall be considered a violation of probation.

14 **5. Cooperation with Board Staff.** Respondent shall cooperate with the
15 Board's inspectional program and in the Board's monitoring and investigation of Respondent's
16 compliance with the terms and conditions of her probation. Failure to comply shall be
17 considered a violation of probation.

18 **6. Continuing Education.** Respondent shall provide evidence of efforts
19 to maintain skill and knowledge as a pharmacist as directed by the Board.

20 **7. Notice to Employers.** Respondent shall notify all present and
21 prospective employers of the decision in case number 2798, and the terms, conditions and
22 restrictions imposed on Respondent by the decision. Within 30 days of the effective date of
23 this decision, and within 15 days of Respondent undertaking new employment, Respondent
24 shall cause her direct supervisor, pharmacist-in-charge and/or owner to report to the Board in
25 writing acknowledging the employer has read the decision in case number 2798.

26 If Respondent works for or is employed by or through a pharmacy employment
27 service, Respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at
28 every pharmacy of the and terms conditions of the decision in case number 2798 in advance of

1 the Respondent commencing work at each pharmacy.

2 "Employment" within the meaning of this provision shall include any full-time, part-
3 time, temporary, relief or pharmacy management service as a pharmacist, whether the
4 Respondent is considered an employee or independent contractor.

5 8. **No Preceptorships, Supervision of Interns, Being Pharmacist-in-**
6 **Charge (PIC), or Serving as a Consultant.** Respondent shall not supervise any intern
7 pharmacist or perform any of the duties of a preceptor, nor shall Respondent be the
8 pharmacist-in-charge of any entity licensed by the Board unless otherwise specified in this
9 order.

10 9. **Reimbursement of Board Costs.** Respondent shall pay to the Board
11 its costs of investigation and prosecution in the amount of \$5,100.00. Respondent shall make
12 said payments as follows: Quarterly payments over the period of probation.

13 The filing of bankruptcy by Respondent shall not relieve Respondent of her
14 responsibility to reimburse the Board its costs of investigation and prosecution.

15 10. **Probation Monitoring Costs.** Respondent shall pay the costs
16 associated with probation monitoring as determined by the Board each and every year of
17 probation. Such costs shall be payable to the Board at the end of each year of probation.
18 Failure to pay such costs shall be considered a violation of probation.

19 11. **Status of License.** Respondent shall, at all times while on probation,
20 maintain an active current license with the Board, including any period during which
21 suspension or probation is tolled.

22 If Respondent's license expires or is canceled by operation of law or otherwise,
23 upon renewal or reapplication, Respondent's license shall be subject to all terms and
24 conditions of this probation not previously satisfied.

25 12. **License Surrender while on Probation/Suspension.**
26 Following the effective date of this decision, should Respondent cease practice due to
27 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
28 Respondent may tender her license to the Board for surrender. The Board shall have the

1 discretion whether to grant the request for surrender or take any other action it deems
2 appropriate and reasonable. Upon formal acceptance of the surrender of the license,
3 Respondent will no longer be subject to the terms and conditions of probation.

4 Upon acceptance of the surrender, Respondent shall relinquish her pocket
5 license to the Board within 10 days of notification by the Board that the surrender is accepted.
6 Respondent may not reapply for any license from the Board for three years from the effective
7 date of the surrender. Respondent shall meet all requirements applicable to the license sought
8 as of the date the application for that license is submitted to the Board.

9 **13. Notification of Employment/Mailing Address Change.** Respondent
10 shall notify the Board in writing within 10 days of any change of employment. Said
11 notification shall include the reasons for leaving and/or the address of the new employer,
12 supervisor or owner and work schedule if known. Respondent shall notify the Board in
13 writing within 10 days of a change in name, mailing address or phone number.

14 **14. Tolling of Probation.** Should Respondent, regardless of residency, for
15 any reason cease practicing pharmacy for a minimum time period as determined by PRP per
16 calendar month in California, Respondent must notify the Board in writing within 10 days of
17 cessation of the practice of pharmacy or the resumption of the practice of pharmacy. Such
18 periods of time shall not apply to the reduction of the probation period. It is a violation of
19 probation for Respondent's probation to remain tolled pursuant to the provisions of this
20 condition for a period exceeding three years.

21 "Cessation of practice" means any period of time exceeding 30 days in which
22 Respondent is not engaged in the practice of pharmacy as defined in Section 4052 of the
23 Business and Professions Code.

24 **15. Violation of Probation.** If Respondent violates probation in any
25 respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke
26 probation and carry out the disciplinary order which was stayed. If a petition to revoke
27 probation or an accusation is filed against Respondent during probation, the Board shall have
28 continuing jurisdiction and the period of probation shall be extended, until the petition to

1 revoke probation or accusation is heard and decided.

2 If Respondent has not complied with any term or condition of probation, the
3 Board shall have continuing jurisdiction over Respondent, and probation shall automatically
4 be extended until all terms and conditions have been satisfied or the Board has taken other
5 action as deemed appropriate to treat the failure to comply as a violation of probation, to
6 terminate probation, and to impose the penalty which was stayed.

7 16. **Completion of Probation.** Upon successful completion of probation,
8 Respondent's license will be fully restored.

9 17. **Rehabilitation Program - Pharmacists Recovery Program (PRP).**
10 Within 30 days of the effective date of this decision, Respondent shall contact the Pharmacists
11 Recovery Program for evaluation and shall successfully participate in and complete the
12 treatment contract and any subsequent addendums as recommended and provided by the PRP
13 and as approved by the Board. The costs for PRP participation shall be borne by the
14 Respondent.

15 If Respondent is currently enrolled in the PRP, said participation is now
16 mandatory and is no longer considered a self-referral under Business and Professions Code
17 section 4363, as of the effective date of this decision. Respondent shall successfully
18 participate in and complete her current contract and any subsequent addendums with the PRP.
19 Probation shall be automatically extended until Respondent successfully completes her
20 treatment contract. Any person terminated from the program shall be automatically suspended
21 upon notice by the Board. Respondent may not resume the practice of pharmacy until notified
22 by the Board in writing. The Board shall retain jurisdiction to institute action to terminate
23 probation for any violation of this term.

24 18. **Random Drug Screening.** Respondent, at her own expense, shall
25 participate in random testing, including but not limited to biological fluid testing (urine,
26 blood), breathalyzer, hair follicle testing, or a drug screening program approved by the Board.
27 The length of time shall be for the entire probation period and the frequency of testing will be
28 determined by the Board. At all times Respondent shall fully cooperate with the Board, and

1 shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics,
2 hypnotics, dangerous drugs or other controlled substances. Failure to submit to testing as
3 directed shall constitute a violation of probation. Any confirmed positive drug test shall result
4 in the immediate suspension of practice by Respondent. Respondent may not resume the
5 practice of pharmacy until notified by the Board in writing.

6 19. **Abstain from Drugs and Alcohol Use.** Respondent shall completely
7 abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their
8 associated paraphernalia except when the drugs are lawfully prescribed by a licensed
9 practitioner as part of a documented medical treatment. Upon request of the Board,
10 Respondent shall provide documentation from the licensed practitioner that the prescription
11 was legitimately issued and is a necessary part of the treatment of the Respondent. This
12 paragraph is not intended to prohibit possession of controlled substances, dangerous drugs or
13 devices as contemplated by paragraph 22 below, if allowed by the PRP.

14 20. **Supervised Practice.** Respondent shall practice only under the
15 supervision of a pharmacist not on probation with the Board. Respondent shall not practice
16 until the supervisor is approved by the Board. The supervision shall be, as required by the
17 Board, either:

18 Continuous - 75% to 100% of a work week.

19 Substantial - At least 50% of a work week.

20 Partial - At least 25% of a work week.

21 Daily Review - Supervisor's review of probationer's daily activities within 24
22 hours.

23 Within 30 days of the effective date of this decision, Respondent shall have her supervisor
24 submit notification to the Board in writing stating the supervisor has read the decision in case
25 number 2798 and is familiar with the level of supervision as determined by the Board.

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1 If Respondent changes employment, Respondent shall have her new supervisor,
2 within 15 days after employment commences, submit notification to the Board in writing
3 stating the direct supervisor and pharmacist-in-charge have read the decision in case number
4 2798 and is familiar with the level of supervision as determined by the Board.

5 Within 10, days of leaving employment, Respondent shall notify the Board in
6 writing.

7 21. **No Ownership of Premises.** Respondent shall not own, have any legal
8 or beneficial interest in, or serve as a manager, administrator, member, officer, director,
9 associate, or partner of any business, firm, partnership, or corporation currently or hereinafter
10 licensed by the Board. Respondent shall sell or transfer any legal or beneficial interest in any
11 entity licensed by the Board within 90 days following the effective date of this decision and
12 shall immediately thereafter provide written proof thereof to the Board.


13 22. **No Access to Controlled Substances.** This term applies during the
14 first two (2) years of probation and it's applicability over respondent is to be determined by
15 the PRP.

16 Respondent shall not order, possess, dispense or otherwise have access to any controlled
17 substance(s) in Schedule II, III, IV or V (Health and Safety Code sections 11055-11058
18 inclusive). Respondent shall not order, receive or retain any triplicate prescription forms.

19 ACCEPTANCE

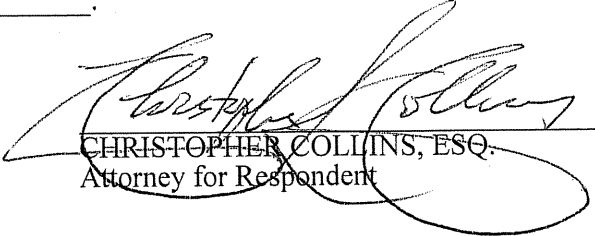
20 I have carefully read the above Stipulated Settlement and Disciplinary Order
21 and have fully discussed it with my attorney, Christopher Collins, Esq. I understand the
22 stipulation and the effect it will have on my Original Pharmacist License Number 46850 . I
23 enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and
24 intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

25 DATED: 5-24-05.

26
27 
28 CYNTHIA ANN DANIELS
Respondent

1
2 I have read and fully discussed with Respondent Cynthia Ann Daniels the
3 terms and conditions and other matters contained in the above Stipulated Settlement and
4 Disciplinary Order. I approve its form and content.

5 DATED: 5-24-05.

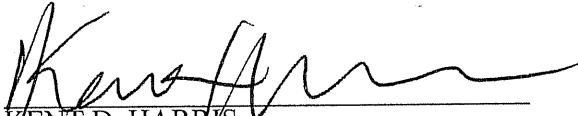
6
7 
8 CHRISTOPHER COLLINS, ESQ.
9 Attorney for Respondent

10 ENDORSEMENT

11 The foregoing Stipulated Settlement and Disciplinary Order is hereby
12 respectfully submitted for consideration by the Board of Pharmacy of the Department of
13 Consumer Affairs.

14
15 DATED: 6/6/05.

16 BILL LOCKYER, Attorney General
17 of the State of California

18 
19 KENT D. HARRIS
20 Deputy Attorney General

21 Attorneys for Complainant

22 DOJ Docket/Matter ID Number: SA2004102776
23 Daniels stipulation.wpd
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BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 2798

CYNTHIA ANN DANIELS
1267 Coon Court
Cool, CA 95614

Original Pharmacist License Number 46850

Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on August 12, 2005.

It is so ORDERED July 13, 2005.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY W. GOLDENBERG
Board President

Exhibit A
Accusation No. 2798

1 BILL LOCKYER, Attorney General
of the State of California
2 KENT D. HARRIS, State Bar No. 144804
Deputy Attorney General
3 California Department of Justice
1300 I Street, Suite 125
4 P.O. Box 944255
Sacramento, CA 94244-2550
5 Telephone: (916) 324-7859
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6 Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2758

12 **CYNTHIA ANN DANIELS**
1267 Coon Court
13 Cool, CA 95614

ACCUSATION

14 **Original Pharmacist License**
Number 46850

15 Respondent.
16

17 Complainant alleges:

18 **PARTIES**

19 1. Patricia F. Harris ("Complainant") brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
21 Affairs.

22 2. On or about January 28, 1994, the Board of Pharmacy ("Board") issued
23 Original Pharmacist License Number 46850 to Cynthia Ann Daniels ("Respondent"). The
24 license was in full force and effect at all times relevant to the allegations brought herein and will
25 expire on June 30, 2005, unless renewed.

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STATUTORY PROVISIONS

3. Section 490 of the Business and Professions Code ("Code") provides:

"A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

4. Section 4022 of the Code provides, in pertinent part:

"'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-use, except veterinary drugs that are labeled as such, and includes the following:

(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without prescription,' 'Rx only,' or words of similar import.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."

5. Section 4300 of the Code provides, in pertinent part:

"(a) Every license issued may be suspended or revoked.

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

1 (5) Taking any other action in relation to disciplining him or her as the
2 board in its discretion may deem proper.”

3 6. Section 4301 of the Code provides, in pertinent part:

4 “The board shall take action against any holder of a license who is guilty
5 of unprofessional conduct or whose license has been procured by fraud or misrepresentation or
6 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the
7 following:

8 (f) The commission of any act involving moral turpitude, dishonesty,
9 fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee
10 or otherwise, and whether the act is a felony or misdemeanor or not.

11 (h) The administering to oneself, of any controlled substance, or the use
12 of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous
13 or injurious to oneself, to a person holding a license under this chapter, or to any other person or
14 to the public, or to the extent that the use impairs the ability of the person to conduct with safety
15 to the public the practice authorized by the license.

16 (j) The violation of any of the statutes of this state or of the United States
17 regulating controlled substances and dangerous drugs.

18 (l) The conviction of a crime substantially related to the qualifications,
19 functions, and duties of a licensee under this chapter. The record of conviction of a violation of
20 Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating
21 controlled substances or of a violation of the statutes of this state regulating controlled substances
22 or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases,
23 the record of conviction shall be conclusive evidence only of the fact that the conviction
24 occurred. The board may inquire into the circumstances surrounding the commission of the
25 crime, in order to fix the degree of discipline or, in the case of a conviction not involving
26 controlled substances or dangerous drugs, to determine if the conviction is of an offense
27 substantially related to the qualifications, functions, and duties of a licensee under this chapter.
28 A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a

1 conviction within the meaning of this provision. The board may take action when the time for
2 appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order
3 granting probation is made suspending the imposition of sentence, irrespective of a subsequent
4 order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
5 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
6 accusation, information, or indictment.

7 (o) Violating or attempting to violate, directly or indirectly, or assisting
8 in or abetting the violation of or conspiring to violate any provision or term of this chapter or of
9 the applicable federal and state laws and regulations governing pharmacy, including regulations
10 established by the board.”

11 7. Section 4026 of the Code provides that the term “furnish” means to supply
12 by any means, by sale or otherwise.

13 8. Section 4059, subdivision (a) of the Code provides:

14 “A person may not furnish any dangerous drug, except upon the
15 prescription of a physician, dentist, podiatrist, optometrist, or veterinarian. A person may not
16 furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist,
17 optometrist, or veterinarian.”

18 9. Section 4060 of the Code provides, in pertinent part:

19 “No person shall possess any controlled substance, except that furnished
20 to a person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished
21 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse
22 practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1.

23 10. Section 4327 of the Code provides:

24 “Any person who, while on duty, sells, dispenses or compounds any drug
25 while under the influence of any dangerous drug or alcoholic beverages shall be guilty of a
26 misdemeanor.”

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11. Health & Safety Code section 11170 provides:

“No person shall prescribe, administer, or furnish a controlled substance for himself.”

12. Health & Safety Code section 11350, subdivision (a) provides:

“(a) Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in the state prison.”

13. California Code of Regulations, title 16, section 1770 provides:

“For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.”

Cost Recovery

14. Section 125.3 of the Code provides that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

Dangerous Drugs/Controlled Substances

15. “Flexeril” is a brand name for a compound containing Cyclobenzaprine, and a dangerous drug within the meaning of section 4022 of the Code.

///

16. “Soma” is a brand name for a compound containing Carisoprodol, and a dangerous drug within the meaning of section 4022 of the Code.

17. "Synthroid" is a brand name for a compound containing Levothyroxine, and a dangerous drug within the meaning of section 4022 of the Code.

18. "Tussionex" is a brand name for a compound containing Chlorpheniramine and Hydrocodone, a Schedule III controlled substance as designated by Health and Safety Code section 11056, subdivision (e)(4), and a dangerous drug within the meaning of section 4002 of the Code.

19. “Valium” is a brand name for a compound containing Diazepam, a Schedule IV controlled substance as designated by Health and Safety Code section 11057, subdivision (d)(8), and a dangerous drug within the meaning of section 4002 of the Code.

20. “Vicodin” is a compound containing Hydrocodone, a Schedule III controlled substance as designated by Health and Safety Code section 11056, subdivision (e)(4), and a dangerous drug within the meaning of section 4002 of the Code.

21. “Xanax” is a brand name for a compound containing Alprazolam, a Schedule IV controlled substance as designated by Health and Safety Code section 11057 subdivision (d)(1), and a dangerous drug within the meaning of section 4002 of the Code.

22. “Zoloft” is a brand name for a compound containing Sertraline, and a dangerous drug within the meaning of section 4022 of the Code.

Background

23. Since approximately 1993, Respondent has been employed as a pharmacist at various Longs Drugs pharmacies in and around Sacramento, California. In approximately August 2002, Respondent, by her own admissions, began to steal various controlled substances and dangerous drugs from Longs Drugs pharmacies while on-duty as a licensed pharmacist. Respondent would also self-administer those controlled substances and dangerous drugs, while on and off-duty, initially ingesting between approximately three-tablets of those substances per day. However, Respondent's self-administration subsequently increased to approximately ten-tablets per day. In total, Respondent estimates that while employed with Longs Drugs between

1 June 2001 and June 2004, she stole and self-administered approximately 14,000 tablets of
2 various controlled substances and dangerous drugs including Flexeril (Cyclobenzaprine), Soma
3 (Carisoprodol), Synthroid (Levothyroxine), Valium (Diazepam), Vicodin (Hydrocodone), Xanax
4 (Alprazolam), and Zoloft (Sertraline).

5 24. On or about June 25, 2004, while on-duty as a licensed pharmacist at
6 Longs Drugs Store #008 located in Elk Grove, California, Respondent was videotaped in the
7 act of stealing and ingesting controlled substances and/or dangerous drugs, including the
8 substance Tussionex (Hydrocodone). That same date, Respondent also stole merchandise from
9 Longs Drugs #008 while under the influence of controlled substances and dangerous drugs.

10 25. On or about June 30, 2004, Respondent's next scheduled work day at
11 Longs Drugs Store #008, she was again videotaped in the act of ingesting and concealing on
12 her person various controlled substances and/or dangerous drugs. Upon questioning by store
13 personnel, Respondent admitted to thefts of merchandise and drugs, and self-administering drugs
14 during the course of her employment with Longs Drugs. Numerous pills were also recovered
15 from Respondent and from her vehicle.

16 26. On or about July 6, 2004, Respondent was arrested by officers of the Elk
17 Grove Police Department on suspicion of embezzlement. Respondent's employment with Longs
18 Drugs was terminated that same day.

19 FIRST CAUSE FOR DISCIPLINE

20 (Criminal Conviction)

21 27. Respondent's license is subject to disciplinary action under sections 490,
22 and 4301, subdivision (l) of the Code, for the commission of acts of unprofessional conduct
23 based upon a criminal conviction. Specifically, on or about November 2, 2004, in the case
24 entitled: *People v. Cynthia Ann Daniels*, (Super. Ct. Sac. County, 2004, No. 04F06131),
25 Respondent was convicted by the court upon a plea of nolo contendere of violating Health and
26 Safety Code section 11377, subdivision (a) (possession of controlled substances), and Penal
27 Code section 504 (unlawful and wrongful appropriation) (felonies), crimes substantially related

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1 to the qualifications, functions or duties of a licensed pharmacist, as defined by California Code
2 of Regulations, title 16, section 1770. The particulars of the criminal conviction are as follows:

3 a. On or about June 30, 2004, at and in the County of Sacramento,
4 State of California, Respondent unlawfully possessed controlled substances, to wit: two (2)
5 Xanax pills and forty-six (46) Diazepam pills; and,

6 b. On or about and between June 30, 2001, and June 30, 2004, at and
7 in the County of Sacramento, State of California, Respondent, while an employee of Longs
8 Drugs, unlawfully and fraudulently appropriated to a use and purpose not in the due and lawful
9 execution of Respondent's trust, property which Respondent had in her possession and under her
10 control by virtue of Respondent's trust, and did unlawfully secrete said property with a fraudulent
11 intent to appropriate it to such a use and purpose contrary to Penal Code section 487,
12 subdivision (a), said property being of a value exceeding Four Hundred Dollars (\$400), to wit:
13 drugs, totaling Nine Thousand Five Hundred Two Dollars and Eighty Cents (\$9,502.80).

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Unlawful Possession of Controlled Substances and Dangerous Drugs)**

16 28. Respondent's license is subject to disciplinary action under section 4301,
17 subdivision (j) of the Code, for acts of unprofessional conduct. Specifically, in and during
18 August 2002, until June 30, 2004, while on-duty as a licensed pharmacist, Respondent self-
19 prescribed, furnished, and attempted to furnish for her use, approximately 14,000 tablets of
20 various controlled substances and dangerous drugs containing Hydrocodone, Diazepam,
21 Alprazolam, Sertraline, Levothyroxine, Carisoprodol, and Cyclobenzaprine by stealing those
22 substances from Longs Drugs, in violation of Health and Safety Code section 11350,
23 subdivision (a).

24 **THIRD CAUSE FOR DISCIPLINE**

25 **(Stealing Controlled Substances, Dangerous Drugs, and Merchandise)**

26 29. Respondent's license is subject to disciplinary action under section 4301,
27 subdivision (f) of the Code, for acts of unprofessional conduct, as more particularly set forth
28 below:

1 a. On multiple occasions during August 2002, until June 30, 2004,
2 while on-duty as a licensed pharmacist at Longs Drugs, Respondent stole property of a value of
3 approximately Nine Thousand Five Hundred Two Dollars and Eighty Cents (\$9,502.80), the
4 property of Longs Drugs; and,

5 b. On or about June 25, 2004, Respondent stole numerous controlled
6 substances and dangerous drugs while on-duty as a licensed pharmacist at Longs Drugs Store
7 #008 located in Elk Grove, California. On that same date, while under the influence of
8 Tussionex (Hydrocodone), Respondent stole merchandise from Longs Drugs Store #008.

9 **FOURTH CAUSE FOR DISCIPLINE**

10 **(Unlawful Self-administration of Controlled Substances and Dangerous Drugs)**

11 30. Respondent's license is subject to disciplinary action under section 4301,
12 subdivision (h) of the Code, for acts of unprofessional conduct. Specifically, from during and
13 in August 2002, until on or about June 25, 2004, by her own admission, Respondent self-
14 administered Hydrocodone, Xanax, Cyclobenzaprine, Zoloft, Synthroid, and Tussionex
15 (Hydrocodone), in violation of Health and Safety Code section 11170, and to such an extent or
16 in such a manner as to be dangerous or injurious to Respondent, to any other person, or to the
17 public, or to such an extent that such usage impaired Respondent's ability to conduct with safety
18 to the public the practice of a licensed pharmacist.

19 **FIFTH CAUSE FOR DISCIPLINE**

20 **(Dispensing Pharmaceuticals while Under the Influence of**

21 **Controlled Substances and Dangerous Drugs)**

22 31. Respondent's license is subject to disciplinary action under section 4301,
23 subdivision (o) of the Code, for acts of unprofessional conduct. Specifically, on or about
24 June 25, 2004, while on-duty as a licensed pharmacist at Longs Drugs Store #008 located in Elk
25 Grove, California, Respondent dispensed and compounded pharmaceuticals while under the
26 influence of Tussionex (Hydrocodone), in violation of section 4327 of the Code.

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1 PRAYER

2 **WHEREFORE**, Complainant requests that a hearing be held on the matters
3 herein alleged, and that following the hearing the Board issue a decision:

- 4 1. Revoking or suspending Original Pharmacist License Number 46850
5 issued to Cynthia Ann Daniels;
6 2. Ordering Cynthia Ann Daniels to pay the reasonable costs incurred by the
7 Board in the investigation and enforcement of this case pursuant to section 125.3 of the Code;
8 and,
9 3. Taking such other and further action as deemed necessary and proper.

10
11 DATED: 2/22/05

12
13 *P. F. Harris*

14 PATRICIA F. HARRIS
15 Executive Officer
16 Board of Pharmacy
17 Department of Consumer Affairs
18 State of California
19 Complainant
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